

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Modesto, California

**June 15, 2023 at 10:30 a.m.**

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1. [22-90420-E-7](#)  
[BLF-4](#)

**ROBERT MERRICK**  
Gary Fraley

**MOTION TO COMPROMISE  
CONTROVERSY/APPROVE  
SETTLEMENT AGREEMENT WITH  
KRISTIE PURDY, STEVEN  
SAVICKAS AND MARK SAVICKAS  
5-8-23 [59]**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 8, 2023. By the court's calculation, 38 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion for Approval of Compromise is granted.</b>
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Gary R. Farrar, the Chapter 7 Trustee, (“Movant”) requests that the court approve a compromise and settle competing claims and defenses with Kristie Purdy, Steven Savickas, and Mark Savickas (“Settlor”). The claims and disputes to be resolved by the proposed settlement regard the ownership of contents of a safe located at 1439 Calaveritas Rd., San Andreas CA. Items found in the safe include 12 gold Canadian coins, 36 gold Canadian coins, 854 silver quarters, 600 silver dollars, 96 bars of silver, and other assorted coins (collectively, “Safe Contents”). Settlor Steven Savickas asserts he owns all coins, as well as an interest in the silver bars, pursuant to a Probate Court order.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit C in support of the Motion, Dckt. 62):

- (A) Settlor will take possession of the following:
  - 1. 12 Gold Coins Canadian
  - 2. 36 Gold Coins Canadian
  - 3. Approximately 854 Silver Quarters
  - 4. 600 Silver Dollars
  - 5. 24 of 96 Bars of Silver
  - 6. Other Assorted Coins
- (B) The remainder of the Safe Contents will be retained by Movant for the benefit of the bankruptcy estate.
- (C) Creditors will not make a claim to the bankruptcy estate’s portion of the safe’s contents.

## **DISCUSSION**

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat’l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S’holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

- 1. The probability of success in the litigation;
- 2. Any difficulties expected in collection;
- 3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

*In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

### **Probability of Success**

Movant argues although they are confident that the Safe Contents are property of the estate, it is difficult to predict the outcome of litigation. There is no certainty Movant would prevail in litigation regarding the ownership of the Safe Contents.

### **Difficulties in Collection**

Movant Trustee argues continued litigation of the contents will require time and expense. Further, Movant saves costs and time through the compromise by avoiding the process of selling the contents.

### **Expense, Inconvenience, and Delay of Continued Litigation**

Movant argues the compromise avoids litigation regarding ownership of the Safe's Contents and any potential future costs to sell the contents at auction.

### **Paramount Interest of Creditors**

Movant Trustee argues that the compromise allows the collection of 72 silver bars with an estimated value of \$21,600 - \$28,000. This is collected without the expense of litigation.

### **Consideration of Additional Offers**

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because after Settlor receives contents they claim, Trustee will receive 72 silver bars valued approximately \$21,600 - \$28,000. The Motion is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve Compromise filed by Gary R. Farrar, the Chapter 7 Trustee, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Approval of Compromise between Movant and Kristie Purdy, Steven Savickas, and mark Savickas (“Settlor”) is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit C in support of the Motion (Dckt. 62).

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors in Possession, Debtor in Possession's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, interested party, and Office of the United States Trustee on April 25 and May 3, 2023. By the court's calculation, 51 and 48 days' notice was provided. 28 days' notice is required.

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **XXXXXXX**

The Motion to Employ has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion to Employ is granted.</b>
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Ramil Abalkhad and Melina Abalkhad ("Debtor in Possession") seeks to employ RHM Law LLP ("Firm") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Firm as counsel in their Chapter 11 proceeding, to provide

professional services relating to this Chapter 11 proceeding such as advising on law and making appearances.

Debtor in Possession argues that Firm's appointment and retention is necessary to advise and assist with carious matters in this Chapter 11 bankruptcy.

Roksana D. Moradi-Brovia, a partner at RHM Law LLP, testifies that she was substituted into this case on April 6, 2023. Declaration, Dckt. 83. Roksana D. Moradi-Brovia testifies she and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

~~————— Taking into account all of the relevant factors in connection with the employment and compensation of Firm, considering the declaration demonstrating that Firm does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Roksana D. Moradi-Brovia as Firm for the Chapter 11 Estate on the terms and conditions set forth in the Retainer Agreement filed as Exhibit A, Dckt. 85. Approval of the hourly rate based compensation is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~————— Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~————— The Motion to Employ filed by Ramil Abalkhad and Melina Abalkhad ("Debtor in Possession") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~————— **IT IS ORDERED** that the Motion to Employ is granted, and Debtor in Possession is authorized to employ RHM Law LLP ("Firm") as Chapter 11 Counsel for Debtor in Possession on the terms and conditions as set forth in the Retainer Agreement filed as Exhibit A, Dckt. 85.~~

~~IT IS FURTHER ORDERED~~ that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

**IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by Firm in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

**IT IS FURTHER ORDERED** that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

3. [22-90160-E-11](#)      **EAGLE LEDGE FOUNDATION,**      **CONTINUED STATUS CONFERENCE RE:**  
[CAE-1](#)      **INC.**      **VOLUNTARY PETITION**  
                                 **Kathleen DiSanto**      **5-18-22 [1]**

Debtor's Atty: Dennis D. Miller; Kathleen L. DiSanto

Notes:

Continued from 2/16/23 [specially set time]

Operating Report filed: 3/14/23, 4/14/23, 5/16/23

[DDM-5] Fourth Interim Order Granting Motion for Interim and Final Orders Authorizing the Use of Cash Collateral, Granting Replacement Liens, Providing Adequate Protection, and Approving DIP Budget and Setting Hearings filed 4/10/23 [Dckt 211]

[DDM-20] Debtor in Possession's Ex Parte Application for Authorization to Pay Expenditures for Repairs to Indiana Avenue Property filed 4/21/23 [Dckt 215]; Order denying filed 5/16/23 [Dckt 221]

<b>The Status Conference is <span style="color: red;">XXXXXXX</span></b>
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## **JUNE 15, 2023 STATUS CONFERENCE**

As of the court's June 13, 2023 review of the Docket, no updated Status Report was filed by the Debtor in Possession. On June 13, 2023, the court entered an order authorizing the employment of a real estate broker for the marketing of the Indiana Avenue Property. Dckt. 225. The court had previously authorized the expenditure of monies to make necessary repairs to the Indiana Avenue Property. May 16, 2023 Order; Dckt. 221.

In the Debtor in Possession's most recent Status Report, filed January 25, 2023 (Dckt. 194), the Debtor in Possession stated that it intended to have filed and commence prosecution of confirmation of a Chapter 11 Plan within thirty to forty-five days of January 25, 2023. No proposed plan and disclosure statement have been filed.

At the Status Conference, **XXXXXXX**

## **FEBRUARY 16, 2023 STATUS CONFERENCE**

On January 25, 2023, the Debtor in Possession filed its updated Third Status Report. Dckt. 194. Items reported include:

- A. The Estate continues to have substantial cash reserves, in addition to other non cash assets, and is administratively solvent.
- B. The Debtor in Possession has authorization to use cash collateral through the end of April 2023, with a continued hearing on the Motion to Use Cash Collateral set for 10:30 a.m. on April 16, 2023.
- C. The Debtor in Possession intends to file an amended Chapter 11 Plan within the next forty-five (45) days. The Debtor in Possession continues to work to determine the nature and scope of certificate holders' interests in property and claims of creditors.
- D. With the Claims Bar Date having passed, there are less than \$10,000 in claims filed.
- E. The Debtor in Possession reports that TMI confirms that notice are being mailed to the certificate holders.

At the Status Conference, counsel for the Debtor in Possession provided an overview of where this case now sits and where it should be heading.

The U.S. Trustee commented that in an unrelated case which had "certificate holders," there was active creditor participation. It was questioned why, if the Debtor in Possession believes that the Certificate Holders are the actual creditors, why notice is not being given directly.



**THE STATUS CONFERENCE SCHEDULED FOR 2:00 P.M.  
WILL BE HEARD IN CONJUNCTION WITH THIS MATTER,  
AT 10:30 A.M.**

4. [22-90296](#)-E-11  
[DCJ-4](#)

PROVIDENT CARE, INC.  
David Johnston

OBJECTION TO CLAIM OF U.S.  
SMALL BUSINESS ADMINISTRATION,  
CLAIM NUMBER 5  
5-2-23 [\[101\]](#)

SUBCHAPTER V

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 3007-1 Objection to Claim—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on Creditor, Chapter 11 Subchapter V Trustee, creditors Melissa Comfort and Preston Miller's attorney, parties requesting special notice, and Office of the United States Trustee on May 2, 2023. By the court's calculation, 44 days' notice was provided. 44 days' notice is required. FED. R. BANKR. P. 3007(a) (requiring thirty days' notice); LOCAL BANKR. R. 3007-1(b)(1) (requiring fourteen days' notice for written opposition).

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p><b>The Objection to Proof of Claim Number 5 of U.S. Small Business Administration is <span style="color: red;">XXXXXXXXXX</span></b></p>
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Provident Care, Inc., the Debtor/Debtor in Possession, ("Debtor/Debtor in Possession") requests that the court disallow the claim of U.S. Small Business Administration ("SBA"), Proof of Claim No. 5-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of (\$684,546.81) as a "Guarantee of money loaned." Proof of Claim 5-1 ¶ 8. From review of the Claim, Debtor/Debtor in Possession is the Guarantor and the Borrowers are a Preston Miller and Melissa Miller, ("Millers"). Attachment 1 at 14.

Debtor/Debtor in Possession asserts that the Claim is barred by the statute of limitations under 28 U.S.C. § 2415(a) and that administrative offsets against the Millers has not extended the statute of limitations.

## DISCUSSION

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial evidence to overcome the prima facie validity of a proof of claim, and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and requires financial information and factual arguments. *In re Austin*, 583 B.R. 480, 483 (B.A.P. 8th Cir. 2018). Notwithstanding the prima facie validity of a proof of claim, the ultimate burden of persuasion is always on the claimant. *In re Holm*, 931 F.2d at p. 623.

## HISTORY OF CLAIM

Debtor/Debtor in Possession states the Millers are the Debtor/Debtor in Possession's former President and Secretary. Debtor/Debtor in Possession claims the Millers personally borrowed \$1,125,500 through Zions First National Bank ("Zions Bank") and Success Capital Expansion & Development Corporation ("Success Capital") on or about January 11, 2006 to develop real property in Modesto, which they personally owned. The financing of the \$1,125,500 included two notes and deeds of trust:

1. Senior Deed of Trust - Zions First National Bank ("Zions Bank") in the amount of \$616,500.
2. Junior Deed of Trust - Success Capital in the amount of \$509,000, assigned to SBA.

From review of the Proof of Claim, the Success Capital Note was dated November 14, 2005. Attachment 1, Proof of Claim 5-1. The Debtor/Debtor in Possession, under the Millers' management, guaranteed the Millers' promissory note. Additionally, Debtor/Debtor in Possession asserts Success Capital loan was assigned to SBA since its inception. The assignment is evidenced in Attachment 1 to the Proof of Claim.

Debtor/Debtor in Possession provides the testimony of Robin Conley ("Declarant"), President of Debtor/Debtor in Possession, as evidence that SBA's claim is time barred the statute of limitations. Declaration, Dckt. 103. Declarant states:

1. July 13, 2010 - Zions Bank recorded a notice of default in which they declared all sums due under the senior loan to be fully due and payable.
2. September 30, 2010 - SBA recorded a notice of default in which they declared all sums due under the junior deed of trust to be fully due and payable.

3. December 6, 2010 - Foreclosure sale was performed by Zions Bank in which a trustee's deed upon sale was recorded in its favor.
4. Declarant reviewed various "Documents" back in 2010.

Declarant does not state what these documents are.

5. No partial payments made since the SBA's declaration of default.

Debtor/Debtor in Possession has not provided a payment record that confirms no partial payments have been made. Rather, they only attach a copy of SBA's Proof of Claim. Exhibit 1, Dckt. 104.

6. Veteran's benefits offsets - Declarant claims when the Millers exited in 2012, there were small Veteran's benefits offsets due to one or more of the Millers. Declarant believes "these have been things like income tax refund intercepts and offsets against other federal benefits" which appear to be remittances or credits on the claim, that do not constitute payments.

Debtor/Debtor in Possession provides no exhibits for the above. It is not clear how Declarant obtained the above information, or whether Declarant simply has a good memory. The information seems like information that would be readily available in Debtor/Debtor in Possession's business records. The court finds more evidence necessary in making a determination on the Objection.

Additionally, Debtor/Debtor in Possession asserts an agreement was reached "over the undisclosed guarantee" in 2012. Objection, Dckt. 101 at 3:6. Debtor/Debtor in Possession does not provide any more context of what the agreement was, nor do they provide the agreement as an exhibit. The only evidence Debtor/Debtor in Possession provides for the agreement is that Declarant states there was an agreement to resolve "various issues with the Millers." Declaration, Dckt. 103 at 2:24-25. Debtor/Debtor in Possession contends they have not made any payments on the Success Capital/SBA claim or guarantee since the agreement was made.

There appears to be missing information regarding the relationship of the Debtor/Debtor in Possession, SBA, and the Millers. The claim arises out of a personal loan between the Millers and Success Capital/SBA. Debtor/Debtor in Possession was the guarantor on the Note. There is a mention of an "agreement" to resolve various issues with the Millers, however, the court has not been presented any information regarding the terms of that agreement and whether it affected the obligations of Debtor/Debtor in Possession on the Note.

At the hearing, **XXXXXXXXXX**

### **MILLERS' JOINDER**

The Millers filed a "Notice of Joinder" to Debtor's Objection on May 31, 2023. Dckt. 110. Millers state they are "contingent co-debtors" to the SBA Claim, having filed their own claims in Debtor/Debtor in Possession's case. The Millers request, pursuant to Federal Rules of Bankruptcy Procedure 9014(c), that the court make applicable to this contested matter the provisions of Federal Rules

of Bankruptcy Procedure 7019 and 7020. The Millers “seek a determination of their own rights and obligations concerning the debt owed to the SBA . . . .” Joinder, Dckt. 110 ¶ 5.

Although the joinder rules are applicable in adversary proceedings, this court is presented with the assertion that they should be made applicable to this Contested Matter.

Numerous bankruptcy courts have determined that the joinder rules of civil procedure do not apply in contested matters. *In re Frank's Oilfield Serv.*, No. 11-06-10826 TF, 2013 Bankr. LEXIS 3270, at \*6 (Bankr. D.N.M. Aug. 9, 2013); *In re Fort Wayne Foundry Corp.*, No. 09-12423, 2009 Bankr. LEXIS 2153, at \*5 (Bankr. N.D. Ind. July 23, 2009) (“Bankruptcy Rule 7018, which permits the joinder of multiple claims in adversary proceedings, should not apply to contested matters.”); *Korneff v. Downey Reg'l Med. Ctr.-Hosp., Inc. (In re Downey Reg'l Med. Ctr.-Hosp., Inc.)*, 441 B.R. 120, 128 (B.A.P. 9th Cir. 2010) (“While Rule 7019, which provides for mandatory joinder of necessary parties, applies in adversary proceedings, it is not included in the list of Bankruptcy Rules that apply to contested matters under Rule 9014.”).

Debtor has provided a South Dakota Bankruptcy case, *In re Dakota Indus.*, 131 B.R. 437 (Bankr. D.S.D. 1991), as support that the joinder rules apply. In *Dakota*, a Chapter 11 debtor disputed amounts due to the Internal Revenue Service (“IRS”) in their filed proof of claim. Debtor was contesting a bank’s wrongful action which caused money not to be tendered to the IRS. The court found that the court could not adjudicate the rights of the bank without the bank being a party. *Dakota*, 131 at 446. Therefore, the court could not enter a judgment as to the Bank’s interest or liability. *Id.* However, the dispute was to determine whether the IRS must credit the debtor the amount allegedly misappropriated. *Id.* The dispute was not to determine the bank’s interest or liabilities. *Id.* Therefore, the court found, the bank was not a required party and the decision could be rendered without the bank as a party. *Id.*

The court agrees with *Dakota*. If the court were to determine the rights of the Millers, the Millers would be an indispensable party. Here, however, the court is not adjudicating the rights and liabilities of the Millers. The court is determining the rights of Debtor/Debtor in Possession and whether the statute of limitations for the underlying claim has expired. The court will not determine the Millers underlying rights and liabilities. Therefore, the court does not find the Millers a required party.

The Millers also cite *In re Di Bona*, 7 B.R. 798 (Bankr. E.D. Pa. 1980) as authority to support that the court may *sua sponte* raise whether a party is a necessary party to be joined. The case, however, surrounds an adversary proceeding. The court in *Di Bona* found they may *sua sponte* join a party in which a court determines they are required to be joined. *Di Bona*, 7 B.R. at 799. The *Di Bona* court, however, addresses whether parties in adversary proceedings are required, not contested matters. The court has not been presented authority in which the court may *sua sponte* join a party to a contested matter.

The Millers also cite *Luper v. Capital Conveyor (In re Lee Way Holding Co.)*, 104 B.R. 881 (Bankr. S.D. Ohio 1989) as authority to support they should be permissively be joined. In *Luper*, the court found Rule 7020 should be construed liberally in order to promote trial convenience and to expedite the final determination of disputes, thereby preventing multiple lawsuits. *Luper* 104 B.R. at 884. *Luper* surrounded an adversary proceeding, in which the plaintiff-debtor initiated four adversary proceedings to collect accounts receivable allegedly due to the bankruptcy estate. “Each of the adversary proceedings join numerous Defendants, although the claims made against each Defendant are separate and distinct from the claims made against each other defendant.” *Id.* at 883. The court found the complaint raises a separate claim against each defendant, however, there was a commonality of law and fact that satisfies the Rule 20(a)

requirement. *Id.* at 884. Again, *Luper* does not address contested matters like the one at present, it addresses adversary proceedings.

The court does not need to be convinced that the joinder rules provided by the Federal Rules of Civil Procedure are incorporated into adversary proceedings. The court, however, the court has not been shown that the joinder rules should be made applicable to this Contested Matters for the Miller.

Even if the joinder rules were to apply contested matters, the court has not been provided adequate information as to what rights the court is to adjudicate against the Millers. The court has been presented an objection to claim, in which Debtor/Debtor in Possession is alleging the statute of limitations bars the claim. The court does not find that the Debtor/Debtor in Possession or SBA needs to have the Millers involved in the determination of the validity of the claim.

Further, while the Millers state that they desire to litigate their obligation which may be owed to the SBA in this Bankruptcy Court based on Provident Care, Inc. filing this Bankruptcy Case, they do not state why and how federal court jurisdiction should be exercised to adjudicate rights between these two non-debtor parties.

At the hearing, **XXXXXXXXXX**

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of U.S. Small Business Administration (“Creditor”), filed in this case by Provident Care, Inc., the Debtor/Debtor in Possession (“Objector”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Proof of Claim Number 5-1 of Creditor is **XXXXXXXXXX**

# FINAL RULINGS

5. [23-90087-E-7](#)  
[FAT-1](#)

VICTOR QUIRALTE  
Flor De Maria Tataje

MOTION TO AVOID LIEN OF  
CITIBANK N.A.  
5-4-23 [\[21\]](#)

**Final Ruling:** No appearance at the June 15, 2023 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on May 8, 2023. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion to Avoid Judicial Lien is granted.</b>
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This Motion requests an order avoiding the judicial lien of Citibank, N.A. ("Creditor") against property of the debtor, Victor R. Quiralte ("Debtor") commonly known as 3302 Suffolk Drive, Ceres, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$5,003.99. Exhibit A, Dckt. 24. An abstract of judgment was recorded with Stanislaus County on July 8, 2022, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$370,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$188,967.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 (a)(1) in the amount of \$300,000.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

## ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Victor R. Quiralte ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Citibank, N.A., California Superior Court for Stanislaus County Case No. CV-22-000607, recorded on October 12, 2022, Document No. 2022-0067691, with the Stanislaus County Recorder, against the real property commonly known as 3302 Suffolk Drive, Ceres, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

6. [23-90111-E-11](#)      **MICHAEL HOFMANN**  
[23-9006](#)              **Brian Haddix**  
**HOFMANN V. HOFMANN ET AL**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
**5-30-23 [18]**

6 thru 8

**Final Ruling:** No appearance at the June 15, 2023 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Plaintiff, and Plaintiff's Attorney as stated on the Certificate of Service on June 1, 2023. The court computes that 14 days' notice has been provided.

The court issued an Order to Show Cause based on Plaintiff's failure to pay the required fees in this case: \$350.00 due on May 14, 2023.

**The Order to Show Cause is discharged, and the adversary proceeding shall proceed in this court.**

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the adversary proceeding shall proceed in this court.

7.	<a href="#"><u>23-90111</u></a> -E-11 <a href="#"><u>CAE-1</u></a>	<b>MICHAEL HOFMANN</b> <b>Brian Haddix</b>	<b>CONTINUED STATUS CONFERENCE RE:</b> <b>VOLUNTARY PETITION</b> <b>3-20-23 [1]</b>
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**Final Ruling:** No appearance at the June 15, 2023 Status Conference is required.

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Debtor's Atty: Brian S. Haddix

Notes:

Continued from 5/23/23 to be heard in conjunction with the continued Motion for Relief.

[DB-1 & CAE-1] First Amended - Debtor's Application Ex Parte to Continue Hearing filed 5/31/23 [Dckt 95]

[DB-1 & CAE-1] Order Continuing Hearing on Motion for Relief from Stay and Continuing Subchapter V Status Conference [to 6/29/23 at 10:30 a.m.] filed 6/2/23 [Dckt 97]

**Pursuant to prior court order (Dckt. 97), the hearing on the Motion for Relief was continued to June 29, 2023 at 10:30 a.m.**



8. [23-90111](#)-E-11  
[DB-1](#)

MICHAEL HOFMANN  
Brian Haddix

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
3-23-23 [\[16\]](#)

GARY HOFMANN ET AL. VS.

SUBCHAPTER V

**Final Ruling:** No appearance at the June 15, 2023 hearing is required.  
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**Pursuant to prior court order (Dckt. 97), the hearing on the Motion for Relief was continued to June 29, 2023 at 10:30 a.m.**